



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

OCT 28 2004

Laurence K. Lau
Deputy Director for Environmental Health
Hawaii Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801

Dear Mr. Lau:

The Environmental Protection Agency (EPA) has reviewed the Amendment and Compilation of Chapter 11-54, Hawaii Administrative Rules, dated August 31, 2004, which contains the water quality standards for the State of Hawaii. The amended standards were approved by the Deputy Attorney General on August 27, 2004, adopted by the Hawaii Department of Health on August 31, 2004, and approved by Governor Linda Lingle on September 21, 2004. They were submitted to EPA on October 1, 2004. These amendments include clarifications to definitions contained in section 11-54-1, revisions to the State's general policy of water quality antidegradation in section 11-54-1.1, revisions to the State's specific criteria for recreational waters contained in section 11-54-8, and correction of inadvertent typographical errors made in the previous revision of sections 11-54-4, 11-54-5, and 11-54-6 on April 4, 2000. Based on our review, it is my pleasure to inform you of EPA's approval of these revised water quality standards pursuant to section 303(c) of the Clean Water Act and its implementing regulations, 40 CFR Part 131.

Section 303(c) of the Clean Water Act (CWA) requires EPA to approve or disapprove new or revised State-adopted water quality standards. Today's action regarding the August 2004 amendments to Hawaii's water quality standards is based on the finding that these amendments are consistent with the requirements of the CWA and EPA's regulations at 40 CFR 131.5 and 131.6. This action pertains only to those portions of the amendments that are subject to EPA's water quality standards approval authority under section 303(c) of the CWA (i.e., the portions addressing antidegradation, beneficial uses, water quality criteria, and implementation of water quality standards for surface waters).

The Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 amended the CWA in part by adding section 303(i). Section 303(i)(1)(A) requires that not later than April 10, 2004, each State having coastal recreation waters shall adopt and submit to the EPA Administrator water quality criteria and standards for coastal recreation waters of the State for those pathogens and pathogen indicators for which EPA has published criteria. These criteria

are contained in EPA's *Ambient Water Quality Criteria for Bacteria - 1986*. If a State fails to adopt water quality criteria that are as protective of human health as EPA's criteria, EPA must propose regulations for the State. EPA considers the current amendments to Hawaii's recreational waters criteria to be protective of human health. However, Hawaii still has no numeric bacteria criteria protecting State water quality standards beyond 1000 feet from shore, although these waters are designated for recreation in the State's water quality standards. Consequently, EPA determined that the requirements of section 303(i) were only partially satisfied, and included Hawaii in EPA's proposed national promulgation of bacteria criteria, as required by the BEACH Act. The final rule, when promulgated, will indicate whether Hawaii is included in the national promulgation for waters beyond 300 meters (1000 feet) from shore.

Public Participation

EPA compliments the State on its efforts to include the public in the development and review of new and revised water quality standards. Public involvement is an integral component of a successful water quality program. EPA finds that the public participation procedures followed by the State in the development and adoption of the August 2004 amendments are consistent with 40 CFR 131.20(b).

ESA Consultation with the Services on EPA's Action

Section 7(a)(2) of the Endangered Species Act (ESA) states that each federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. EPA has determined that today's action will have "no effect" on any federally listed endangered or threatened species or critical habitat.

If there are any questions regarding our action, please contact Sara Roser, of my staff, at (415) 972-3513. As always, we look forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,

Alexis Strauss 28 Oct. 2004

Alexis Strauss, Director
Water Division

cc: June Harrigan, Hawaii Department of Health
Tonya Fish, U.S. Environmental Protection Agency, Office of Water (4305)
Claudia Fabiano, U.S. Environmental Protection Agency, Office of Water (4305)